BOOK REVIEWS.

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GENERAL THEORY OF LAW. By N. M. KORKUNOV, Late Professor of Law, University of St. Petersburg. English Translation by W. G. HASTINGS, Dean of the Law Faculty, University of Nebraska. Boston: THE BOSTON BOOK CO. 1909. pp. xiv, 524.

With the exception of Pulszky's Theory of Law and Civil Society, this is the only modern account of Continental juristic thought accessible to the reader of English; and, as the discussion of many important problems has been brought down to date, while Pulszky wrote before the sociological movement had made much headway, Judge Hastings deserves our thanks for enabling American lawyers and students of law to come in touch with the best that has been thought and written upon fundamental problems of legal science. The book chosen for translation, while not in all respects so representative of recent thought as Schmidt's Allgemeine Rechtslehre, has the advantage over that and other German writings that less consideration is devoted to matters of purely local concern. The reader does not begrudge the brief space that is given to things Russian, since the institutions and doctrines disclosed are often of no little juristic interest, and it has not been easy to obtain authentic information with respect to many of them.

Looking first at the work of the author, one must bear in mind that he was primarily a teacher, who sought to expound, interpret and criticize the views of others, and to reconcile where possible, rather than to develop a system of his own. This reconciling tendency, characteristic of teachers, appears in many places. Nevertheless he has no ordinary power of independent thought, and in his psychological theory of law, his psychological view of the origin of the natural-law idea, and his discussion of the nature of a legal right, upon some points he has made distinct contributions. It must be borne in mind also that the first edition appeared in 1887, at the nadir of philosophical jurisprudence, before the recent revival of philosophy at large had made itself felt in legal science.

Russian legal education and juristic thought appear to have been dominated by German scholarship. Hence the author was bound to expound and to criticize in some detail the philosophical and encyclopædic methods of exposition and study of legal science, which had been introduced into his country from Germany. Americans who have been arguing for "elementary law," should read and ponder the critique of juristic encyclopædia. The "rapid superficial view of materials," which the author criticizes as the result of teaching experience, is the same, by whatever name it is called.

Jurists, in general, fall into three groups or schools. The philosophical jurist sees in law the expression of an idea—an expression of justice and right found rather than made by judges or jurists or legislators. The historical jurist agrees that law is found, not made, differing only with respect to what it is that is found. To him a principle of human action is found by human experience, and is found and developed in a rule. The analytical jurist conceives of

law as the product of a conscious and determinate human will. Writing in the decadence of philosophical jurisprudence, at a time when the historical school was still dominant and when the impetus given to analytical views by Jhering was beginning to be felt, the author is possibly somewhat less than just toward philosophical jurisprudence, is a keen but appreciative critic of the historical school, and shows a strong liking for the analytical jurists. On the whole, he may be said to be a sociological jurist with analytical tendencies; a type which seems likely to be in the van of juristic development in the near future.

As has been said, philosophical jurisprudence was at its worst when the author wrote his first edition. Hence the prophecies on pp. 31, 33, and the identification of philosophical jurisprudence with the older metaphysical methods, are not borne out by the event of the last decade. Probably his discussion of the diversity of "fundamental" legal institutions would be agreed to by philosophical jurists to-day. Kohler, for example, would say that they are of necessity as diverse as human culture. Certainly the neo-Hegelian view is not to be dismissed with a wave of the hand. American lawyers, however, who hold so generally to the eighteenth century natural-law theories of our bills of right, will do well to think through the author's discussion upon this subject.

The critique of the views of the German historical school is sound and well put. Except for Professor Munroe Smith's brief lecture on Jurisprudence and Professor Gray's severely analytical exposition of the sources of law, it is about all that we have in English to oppose to the vigorous but belated presentation of the other side by the late Mr. Carter.

It has been said that the author shows pronounced analytical tendencies. He had read and appreciated Austin. More to the purpose, he had mastered the epoch-making works of Binding and Jhering, so that, while he presents their views in a way that should be welcomed by those who read English only, he by no means follows them slavishly. Thus he opposes the imperative theory of law and criticizes Jhering's doctrine that constraint is a fundamental point. At the same time he recognizes that law is the "voluntary and intended work of humanity" (p. 116), and holds to the analytical view of the possibilities of conscious lawmaking. It does not seem just, however, to speak of the analytical theory as a theory of "the arbitrary formation of law." Universal principles may work upon legislators as well as upon jurists or judges. Legislation is not of necessity any more arbitrary than other forms of law-making. And, with respect to law in general, the analytical theory, in the hands of modern analytical jurists, at least, does not purport to be a theory of the historical origin of law.

Sociological jurisprudence was but beginning in 1887. But the author seems to have taken a sociological starting-point from the first, and to have kept his successive editions well abreast of the movement. Attention may be called particularly to the discussion of individualism in law and morals (pp. 56 ff., 105), of the relation of the individual to society (p. 324) and of the relations of law and legislation (pp. 107, 149, 156). The critique of the views of the historical school on the latter subject is especially timely for American readers. On a single point one feels inclined to go further. The speculations of jurists, a class apart, and a class of more or less cosmopolitan char-

acter, pursued as pure technical speculations, have often played a much greater part in legal development than national genius, or legislation or local custom. There have been fashions in legal thinking, as in other things, and the influence of conspicuous bodies of legal doctrine must be reckoned with.

Turning to the work of the translator, so far as comparison with the French version allows one to judge, it appears well done. The text is clear and readable. The influence of the French version appears in some curious Gallicisms, *e. g.*, "the man" for mankind (p. 187), "de Warnkoenig," "de Walter," "de Bluhme" (pp. 17, 18), "antique society" (p. 70) and a tendency to use a *c* in German titles where the author used a *k*. One may feel also that "subjective law" (p. 167) is not felicitous, that the ambiguity of *pravo* (*droit, Recht, jus*) might have been dealt with more delicately and judiciously, and that the use of "duty" and "obligation" (pp. 174, 175, 188, 196), might be at times more discriminating. In this last respect, the French version seems subject to criticism. How far the original is reflected faithfully, I am unable to say.

The proof-reader has not done his part of the work with equal fidelity. In five references to Bierling's well-known work (pp. 54, 167, 169, 192, 208) there are five errors. Puntschart is spelled "Punchart" (p. 197). The names of Jhering (p. 18), Voigt (p. 123) and Gumplowicz (p. 99, 336) are also misspelled. Neglect of Greek accents (pp. 23, 116) and of German *umlauts* (*e. g.* p. 55) and German nouns without their accustomed initial capitals, create an impression of carelessness.

In other respects, printer and publisher have made an attractive book.

R. P.

THE FEDERAL CORPORATION TAX LAW OF 1909. By ARTHUR W. MACHEN, JR. Boston: LITTLE, BROWN & Co. 1910. pp. xxv, 289.

This book is primarily intended as a practical handbook to aid corporations in preparing returns and complying with the other requirements of the Corporation Tax Law. The author modestly states its aim as that of "furnishing practical assistance in what may not inappropriately be described as an emergency." The difficulty of writing a text book on a new and unprecedented statute is obvious.

The origin of the law is first briefly described, and it is shown how the desire of Congress to supplement the revenue derivable from the Tariff Law and the general popular agitation in favor of an Income Tax resulted in this compromise between those who wished to pass a general income tax and those who were opposed to it.

The uncertainty as to the precise nature of the tax is shown by the author's inability to discover exactly upon what the tax is to be imposed. That this uncertainty is not the author's alone, but is one shared by members of the bar in general is well known, and the incidence of the tax must remain in doubt until the Supreme Court has spoken. Economically the tax would seem to be an income tax but the legal classification of taxes is historical rather than economic. While this is generally true, the courts sometimes seem to lose sight of it and economic definitions are treated as weighty. Thus the term "direct tax" was held in the *Income Tax* cases to be an economic classification by the Supreme Court and the historic *non economic* classification accorded